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ATTACHMENT 4.35-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: NEVADA

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

The State uses other factors described below to determine the seriousness of deficiencies in addition to those described at '488.404(b)(1):

- (1) The relationship of the one deficiency with other deficiencies:
- (2) The facility's prior survey history; and
- (3) The facility's ownership (or party/entity responsible for operating the facility), specifically, the prior and current status of the owner's (operator's) other facilities in relationship to the deficiency(ies) cited.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE/TERRITORY: NEVADA

CRITERIA FOR APPLICATION OF SPECIFIED REMEDIES
SPECIFIED REMEDIES AS ON PAGE 79C

DENIAL OF PAYMENT FOR NEW ADMISSIONS

- Sec. 133 1. The Bureau of Regulatory Health Services (bureau) may request the welfare division to deny Medicaid payment to a facility for new admissions if:
- (a) The facility does not substantially correct the deficiencies within 90 days or within the time required by federal Medicaid law after the facility is notified by the bureau of the deficiencies; or
 - (b) The bureau has cited a facility with substandard quality of care (severity score of level three or more and scope of level three or more as defined under federal survey guidelines) on two of the last three consecutive standard surveys.
2. If the facility achieves and maintains compliance with the requirements, the bureau shall request the welfare division to resume payments to the facility prospectively, effective on the date compliance was achieved.
- Sec. 134 1. The bureau may request the welfare division to deny payment to a facility for new admissions who have certain specified diagnoses or special care needs if:
- (a) The facility is not currently able to provide appropriate care, services, or treatment for these persons; or
 - (b) Caring for these persons will adversely affect care provided to other recipients.

2. If the facility achieves and maintains compliance with the requirements, the bureau must request the welfare division to resume payment to the facility prospectively, effective on the date compliance was achieved.

- Sec. 135
1. The bureau may request the welfare division to suspend all or part of the Medicaid payments to a facility for services furnished to a Medicaid recipient on or after the date of the deficiency, regardless of whether the recipient was admitted before, on, or after the date of the deficiency.
 2. If the facility achieves compliance with the requirements, the bureau shall request the department of human resources to resume payments retroactively.

CIVIL MONEY PENALTIES

- Sec. 106
- The bureau may impose a monetary penalty alone or in addition to other penalties. The purpose of a monetary penalty is to provide a fund for protecting the health, safety, rights, welfare, and well-being of recipients and the property of residents in facilities and to deter future deficiencies. If a penalty is imposed, the criteria in section 107 below must be applied.

- Sec. 107
1. Except as otherwise provided in subsection 4, the bureau may impose a monetary penalty on any facility that is not in compliance with any federal participation requirement, regardless of whether the deficiency constitutes an immediate and serious threat.
 2. If a monetary penalty is imposed, the initial penalty based on the severity and scope score of the deficiency must be imposed as provided in section 111 below.
 3. In addition to the initial penalty, the bureau may impose a monetary penalty for each day of noncompliance from the date the noncompliance occurs or is identified until compliance is verified.
 4. A facility is not subject to a monetary penalty for a de minimis deficiency. As used in this subsection, "de minimis deficiency" means a finding rated as having a severity level of one or two under federal survey guidelines.

- Sec. 108 1. The bureau shall impose an initial penalty pending a hearing or appeal. The payment of the penalty must not be stayed during the pendency of any administrative appeal.
2. The payment of any daily penalties that accrue while the facility has a hearing pending on the initial determination of deficiencies leading to the imposition of sanctions must be stayed pending the appeal.
- Sec. 109 If the bureau imposes a monetary penalty, the penalty must be imposed as provided in sections 109, 110, and 111 of this attachment. In imposing the penalty, the total penalty assessed against any facility bears interest at the rate of 10 percent per annum.
- Sec. 110 1. In no event may the principal amount of the total daily monetary penalty assessed against any facility exceed \$1,000 per deficiency per day.
2. Where more than one deficiency is subject to a monetary penalty, the total daily penalty assessed against a facility may not exceed the maximum daily penalty per facility permitted by 42 U.S.C. ' 1396r for monetary penalties assessed against Medicaid facilities.
3. If the maximum daily administrative penalty per facility permitted by federal law for a facility of the type being sanctioned is less than that permitted by 42 U.S.C ' 1396r, the lower maximum penalty amount must be imposed.
- Sec. 111 1. In determining the amount of an initial penalty, the bureau shall consider the severity alone if the severity level is four. In determining the amount of the monetary penalty where the severity level is less than four, both severity and scope must be considered. In determining whether to impose a daily monetary penalty, the bureau shall consider the severity and scope and the factors indicated for increased and decreased penalties provided in sections 112 and 114 of this attachment.
2. For initial deficiencies with a severity level of four, an initial monetary penalty of \$500 per deficiency must be imposed. In addition, a penalty of \$10 per recipient per day may be imposed for each day the deficiency continues.

3. For initial deficiencies rated with a severity level of three and a scope level of three or more, a monetary penalty of \$400 per deficiency must be imposed. In addition, a penalty of \$8 per recipient per day may be imposed for each day the deficiency continues.
4. For initial deficiencies with a severity level of three and a scope of level of two, an initial monetary penalty of \$200 per deficiency must be imposed. In addition, a penalty of \$4 per recipient per day may be imposed for each day the deficiency continues.
5. For initial deficiencies with a severity level of two and a scope level of three, an initial monetary penalty of \$100 per deficiency-cy must be imposed. The payment of this penalty must be suspended if the facility has corrected the deficiencies within the time specified in the plan of correction. In addition, a penalty of \$2 per recipient per day may be imposed for each day the deficiency continues.

- Sec. 112
1. Penalties must be increased if deficiencies are uncorrected or repeated or compliance is falsely alleged.
 2. For each uncorrected deficiency present after the time specified by the bureau for correction of the deficiency, the monetary penalty must be computed at the rate of one and one-half times the rate that was or could have been assessed initially for a deficiency of that severity and scope
 3. For each repeat deficiency present within 18 months after an initial finding of the deficiency, the monetary penalty must be computed at the rate of one and one-half times the rate that was or could have been assessed initially for a deficiency of that severity and scope.
 4. The bureau may double the daily penalty that was or could have been assessed if the facility alleges compliance and the bureau finds on a survey that at the time compliance was alleged, the deficiencies continued to exist.

- Sec. 113
- There is a rebuttable presumption that deficiencies identified on a subsequent survey were present on each day between the date of the initial finding and the date of the subsequent finding.

- Sec. 114 1. If a facility against which a monetary penalty is imposed:
- (a) waives the right to a hearing;
 - (b) corrects the deficiencies that were the basis for the penalty; and
 - (c) pays the penalty within 15 days after notice of the penalty,
- the penalty must be reduced by 25 percent and no interest may be charged.
2. If, before a survey by the bureau, the facility identifies and corrects the deficiencies that are the basis for the penalty, the penalty must be reduced by 50 percent and no interest may be charged if the assessment is paid within the time required by sections 52 to 147, inclusive, of this attachment.
- Sec. 115 If a monetary penalty is assessed on a daily basis according to the number of recipients and the number of recipients fluctuates, the penalty must be computed on the basis of the average daily number of recipients during the three (3) months preceding the imposition of the penalty.
- Sec. 116 The effective beginning date of a daily monetary penalty is:
- 1. In the case of an immediate and serious threat, the date the deficiency occurred; and
 - 2. In any other case, the day the deficiency is identified.
- Sec. 117 1. Daily penalties and interest must be computed after compliance has been verified or the provider has been sent notice of termination of a license or provisional license. A daily penalty must end on the effective date of compliance or termination of the license of the facility.
2. If a provider achieves compliance, the bureau shall send a separate notice to the facility containing:
- (a) The amount of penalty per day;
 - (b) The number of days involved;

(c) The due date of the penalty; and

(d) The total amount due.

3. If a license of a facility is to be terminated, the bureau shall send the information required by subsection 2 in the notice of termination.
4. If the bureau's decision of noncompliance is upheld on appeal or the facility waives its right to a hearing, the monetary penalty must be imposed for the number of days between the effective date of the penalty and the date of correction of the deficiencies or, if applicable, the date the license of the facility is terminated.

- Sec. 118
1. The daily accrual of a monetary penalty must end if the facility demonstrates that substantial improvements have been made to correct the deficiencies and that the health, safety, and well-being of recipients are adequately protected and safeguarded.
 2. A monetary penalty may be imposed on a daily basis for no longer than six (6) months, after which the bureau shall deny, suspend, or revoke the license of the facility and, if the facility is a Medicaid facility and major deficiencies remain, request the welfare division to terminate the Medicaid provider agreement of the facility.
 3. If a deficiency in a Medicaid facility presents an immediate and serious threat and continues to exist on the 23rd day following the appointment of temporary management, the bureau shall request the welfare division to terminate the Medicaid provider agreement of the facility.
 4. If the provider can supply credible evidence that substantial compliance with participation requirements was attained on a date preceding that of the survey, monetary penalties accrue only until that date of correction for which there is credible evidence. As used in this subsection, "credible evidence" means actual documentation that compliance has been achieved.

- Sec. 119
1. Initial penalty assessment payments are due within 15 days after notice of the penalty and must be paid irrespective of any administrative appeal.

2. The daily monetary penalty is due and must be paid within 15 days after compliance is verified or termination of a license is effective and the facility is notified of the amount of the total daily penalty due.
3. If the facility has appealed a decision imposing a monetary penalty, the daily penalty is due and must be paid after the final administrative decision is rendered and 15 days after the facility has been notified of the amount of the total daily penalty due.

- Sec. 120
1. If the facility fails to pay a monetary penalty, the health division may suspend the license of the facility.
 2. The health division shall provide proper notice of its intent to suspend the license of the facility.
 3. If the facility fails to pay the penalty, including any additional costs incurred in collection of the penalty, within 10 days after receipt of the notice, the health division shall suspend the license of the facility. The suspension must not be stayed during the pendency of any administrative appeal.

- Sec. 121
- Any costs, including attorney's fees, incurred by the bureau or the health division in the collection of any monetary penalty may be recovered from the facility.

- Sec. 122
1. The amount of any penalty owed by a Medicaid facility, if it has been determined, may be deducted from any money otherwise owed to the facility by the welfare division.
 2. If the facility does not pay a monetary penalty by the date it is due and no extension of time to pay is granted, the administrator of the health division shall notify the administrator of the welfare division of the amount of the penalty due and owing and shall request withholding of the amount owed.
 3. The administrator of the welfare division will take the appropriate steps to withhold the amount of the penalty owed, including any interest and costs of collection, from the Medicaid payment otherwise due the facility. Money so withheld must be remitted to the health division for deposit in the special fund established pursuant to section 124 below. Money withheld for costs of collection must be applied by the administrator of the health division to the account incurring the costs.

Sec. 123 Unless it is waived as provided in section 114, interest at the rate prescribed in NRS 449.163 will be assessed on the unpaid balance of the penalty, beginning on the due date.

- Sec. 124
1. Unless otherwise required by federal law, money collected by the health division as administrative penalties must be deposited into a separate fund and applied to the protection of the health, safety, well-being, and property of recipients, including residents of facilities that the health division finds deficient.
 2. Any of the following applications of money collected, without limitation, are permissible:
 - (a) Reimbursement of costs related to the operation of a facility pending correction of deficiencies or closure;
 - (b) Reimbursement of residents for personal money lost; and
 - (c) Payment of the cost of relocating residents to other facilities.

Sec. 125 The bureau may settle a case at any time before a final administrative hearing decision.

APPOINTMENT OF TEMPORARY MANAGEMENT

Sec. 126 1. If a temporary manager is to be appointed, the bureau shall orally notify the facility of the appointment. Written notice that complies with the following requirements must be mailed within 24 hours after the oral notice:

"Except in an emergency or in a case in which the sanction is the issuance of a provisional license, the notice must be delivered at least 5 days before the imposition of the sanction and must include:

1. A citation of the statutory and regulatory authority for the sanction;
2. The factual findings providing the basis for the deficiency;

3. A description of any circumstances, such as self-correction or subsequent, uncorrected or repeated deficiencies, considered in determining the sanction;
 4. Instructions for responding to the notice, including a statement of the right of the facility to a hearing, the time within which a hearing must be requested, and the consequences of waiving a hearing; and
 5. If a monetary penalty is to be imposed, the amount of any initial and any daily monetary penalty per day of noncompliance."
2. If the facility does not accept the temporary manager or a temporary manager is not available within 10 days after the date of the deficiency, and the immediate and serious threat is not removed, the bureau shall deny, suspend, or revoke the license of the facility, and, if applicable, shall also recommend to the welfare division termination or suspension of the Medicaid provider agreement of the facility.
 3. If the facility accepts the temporary manager, the bureau shall:
 - (a) Notify the facility that, unless it removes the immediate and serious threat, it's license will be denied, suspended, or revoked pursuant to NRS 449.160; and
 - (b) Where applicable, recommend to the welfare division that the Medicaid provider agreement of the facility be terminated, effective on the 23rd day after the date of appointment of the temporary manager.
 4. If the immediate and serious threat is not removed on or before the 23rd day after the appointment of the temporary manager, the bureau shall deny, suspend, or revoke the license of the facility, and, if applicable, recommend to the welfare division that the Medicaid provider agreement be terminated.

Sec. 127 Appointment of a temporary manager where there is not an immediate and serious threat must be made in conformity with the provisions for notice contained in section 126.

- Sec. 128 1. The temporary manager must:
- (a) Be a person qualified to operate the facility pursuant to the provisions of chapter 449 of NRS relating to the licensing of the facility;
 - (b) Demonstrate prior competency as an administrator of a medical facility or a facility for the dependent, or have other relevant experience pertinent to the deficiencies identified; and
 - (c) Have had no disciplinary action taken against him by any licensing board or professional society in any state.
2. The temporary manager may be an employee of the health division or a private person or agency that contracts with the health division to serve in that capacity.
- Sec. 129 The costs and expenses of temporary management, including the compensation of the manager, must be paid by the facility through the bureau while the temporary manager is assigned to the facility.
- Sec. 130 The temporary manager may take such action as is required to mitigate the immediate danger at the facility, including without limitation providing for the safe transfer of residents or prohibiting the transfer of residents.
- Sec. 131 If a facility fails to agree to the appointment of a temporary manager or fails to relinquish authority to the temporary manager, the health division shall:
- 1. Request the attorney general to bring an action pursuant to NRS 439.565;
 - 2. Deny, suspend, or revoke the license of the facility; and
 - 3. If applicable, request the welfare division to terminate the provider agreement of the facility in accordance with the requirements of the Medicaid program.

- Sec. 132 1. Temporary management of a facility must be terminated if the bureau determines that:
- (a) The facility has substantially corrected the deficiency and has secured management capable of ensuring continued compliance with applicable state and federal statutes, regulations, conditions, and standards;
 - (b) The facility has substantially corrected the deficiencies; or
 - (c) The license of the facility has been denied, revoked, or suspended.
2. If temporary management will be needed for more than 24 days, the bureau shall request the attorney general to initiate judicial proceedings as authorized by NRS 439.565.

IN EMERGENCY CASES, CLOSURE OF THE FACILITY AND/OR TRANSFER OF RESIDENTS

- Sec. 144 1. Except as otherwise provided in subsection 2, if the bureau proposes to close a facility, the health division shall, at least five (5) days before the transfer, notify or cause to be notified personally or by written or telephonic means:
- (a) each recipient; and
 - (b) any person indicated on the record of the recipient as a person to be notified in case of an emergency,
- of the nature of the emergency and the proposed transfer.
2. In an acute emergency, residents may be transferred without prior notice. As used in this subsection, "acute emergency" means that action must be taken without prior notice as a result of an immediate and serious threat.
- Sec. 145 If the residents of a residential facility are to be transferred, the following criteria must be applied in the following order to determine the most appropriate placement of each resident:
- 1. The medical and psychological health of the resident and the suitability of the proposed facility to meet the resident's medical and psychosocial needs;

2. The facility, if any, where the spouse or immediate family member of the resident is a resident; and
3. The geographical proximity of the proposed facility to the immediate family or regular visitors of the resident.